

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

Lori Precourt, Administrator
of the Estate of Carolyn Black

v.

Civil No. 10-cv-337-LM

Fairbank Reconstruction Corp.,
d/b/a Fairbank Farms; Greater
Omaha Packing Company, Inc.; and
Shaw's Supermarkets, Inc.

O R D E R

Precourt has been granted summary judgment on her claims for strict products liability against both Fairbank and Shaw's. Fairbank and Shaw's have opined that that judgment for Precourt on Counts I and II moots her claims against them for breach of warranty (Counts IV and VI), negligence (Counts VII and IX), and violation of the New Hampshire Consumer Protection Act (Counts X and XIII). See Defs.' Resp. (doc. no. 84), at 6. At the same time, Fairbank and Shaw's deny negligence. See id.

In her pretrial statement, under "Plaintiff's Written Waiver of Claims," Precourt entered "Not Applicable." Doc. no. 126, at 7. Yet, both Precourt's pretrial statement and the pretrial statement submitted by Fairbank and Shaw's characterize the case as raising only the following issues:

1. What are the damages owed by Fairbank and Shaw's to the Estate of Carolyn Black for Ms. Black's

conscious pain and suffering, mental anguish, medical bills and expenses, burial expenses and wrongful death; and

2. Whether it is more likely true than not true that the E. coli O157:H7 that sickened Ms. Black originated at GOPAC.

Id. at 3; Defs.' Final Pretrial Statement (doc. no. 131), at 3.

That statement of the case certainly makes it sound as if Precourt is no longer pursuing her warranty, negligence, and CPA claims against Fairbank and Shaw's. In the run-up to trial, the court would benefit from having a clearer impression of Precourt's case. Accordingly, Precourt is directed to notify the court of her intentions regarding Counts IV, VI, VII, IX, X, and XIII within seven days of the date of this order.

SO ORDERED.



Landya McCafferty
United States Magistrate Judge

March 9, 2012

cc: Paula J. Clifford, Esq.
Christopher P. Dombrowicki, esq.
Andrew D. Dunn, Esq.
Stephen P. Ellenbecker, Esq.
D. Patterson Gloor, Esq.
Robert E. Mazow, Esq.
Brian D. Nolan, Esq.
Stephen J. Schulthess, Esq.
Shawn K. Stevens, Esq.
Ralph A. Weber, Esq.